

Notice of Allowability

Application No.

10/786,679

Applicant(s)

BATE ET AL.

Examiner

Cathy K. Worley

Art Unit

1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to papers filed on May 11, 2007.
2. ☒ The allowed claim(s) is/are 1-13 and 15-30.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

DETAILED ACTION

RESTRICTION REQUIREMENT WITHDRAWN

1. The amendment received on May 11, 2007 put the product claims in condition for allowance; therefore the restriction requirement between the product claims and method claims has been withdrawn. All claims are examined.

EXAMINER'S AMENDMENT

2. An extension of time under 37 CFR 1.136(a) is required in order to make an examiner's amendment which places this application in condition for allowance. During a telephone conversation conducted on May 24, 2007, Karen K. Varley requested an extension of time for 1 MONTH(S) and authorized the Director to charge Deposit Account No. 16-1852 the required fee of \$120.00 for this extension and authorized the following examiner's amendment. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

3. The application has been amended as follows:

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IN THE CLAIMS:

Claim 14 is cancelled without prejudice.

1. (Currently Amended) An isolated nucleic acid molecule comprising a polynucleotide which initiates transcription in a plant cell and comprises a the sequence of SEQ ID NO: 1.
2. (Currently Amended) An expression cassette comprising the polynucleotide nucleic acid molecule of Claim 1 operably linked to a polynucleotide of interest.
19. (Currently Amended) A method for expressing a first polynucleotide in a plant cell, said method comprising introducing into a plant cell an expression cassette comprising a promoter and a first polynucleotide operably linked thereto, wherein said promoter comprises a second polynucleotide that initiates transcription of an operably linked polynucleotide in a plant cell, and wherein said second polynucleotide comprises ~~is selected from the group consisting of~~
 - a) ~~a polynucleotide comprising the sequence set forth in SEQ ID NO:1, or a complement thereof~~
 - b) ~~a polynucleotide comprising at least 55 contiguous nucleotides of the sequence set forth in SEQ ID NO:1;~~

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- ~~e) a polynucleotide comprising a sequence having at least 70% sequence identity to the sequence set forth in SEQ ID NO:1; and,~~
- ~~d) a polynucleotide that hybridizes under stringent conditions to the complement of SEQ ID NO:1.~~

24. (Currently Amended) A method for selectively expressing a first polynucleotide in the embryo surrounding region (ESR) of a plant seed, said method comprising introducing into a plant an expression cassette comprising a promoter and a first polynucleotide operably linked thereto, wherein said promoter comprises a second polynucleotide that initiates transcription of an operably linked polynucleotide in the ESR of a plant seed, and wherein said second polynucleotide comprises ~~is selected from the group consisting of a) a polynucleotide comprising the sequence set forth in SEQ ID NO:1, or a complement thereof;~~

- ~~b) a polynucleotide comprising at least 55 contiguous nucleotides of the sequence set forth in SEQ ID NO:1;~~
- ~~e) a polynucleotide comprising a sequence having at least 70% sequence identity to the sequence set forth in SEQ ID NO:1; and,~~
- ~~d) a polynucleotide sequence that hybridizes under stringent conditions to the complement of SEQ ID NO:1.~~

Comments

4. Claim 14 failed to further limit claim 13, and therefore it has been cancelled.

5. Claims 1-13 and 15-30 are allowed.

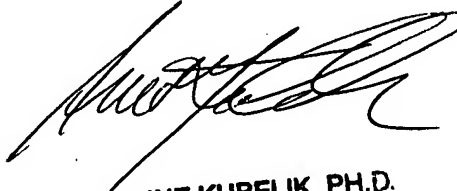
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cathy K. Worley whose telephone number is (571) 272-8784. The examiner has a variable schedule but can normally be reached on M-F 10:00 - 4:00 with additional variable hours before 10:00 and after 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on (571) 272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/CKW/



ANNE KUBELIK, PH.D.
PRIMARY EXAMINER